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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1945.

No. [redacted] 67

UNITED STATES OF AMERICA,
*Petitioner,*

*vs.*

LOUIS BRUNO.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.*

## BRIEF FOR THE RESPONDENT IN OPPOSITION.

GEORGE R. SOMMER,
*Attorney for Louis Bruno,*
17 Academy Street,
Newark 2, New Jersey.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton Street, Newark 5, N. J.

# INDEX.


| | PAGE |
|---|---|
| Opinion Below | 1 |
| Jurisdiction | 1 |
| Questions Presented | 1 |
| Statute and Regulations Involved | 2 |
| Statement | 2 |
| Argument | 3 |
| Conclusion | 4 |


STATUTES AND REGULATIONS.


| | |
|---|---|
| Criminal Appeals Rules, XI and XIII, May 7, 1934 | 1 |
| Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Sec. 901) | 2 |
| Judicial Code, sec. 240 (a), as amended by Act of February 13, 1925 | 1 |
| Maximum Price Regulations No. 30 (7 F. R. 9732) (Sec. 2(a) ) | 2 |


CITATION OF CASE.


| | |
|---|---|
| *United States ex rel. Bowels* v. *Leonard Seidmon*, decided by Circuit Court of Appeals for Seventh Circuit on March 19, 1946 | 4 |

## Opinion Below.

The opinion of the circuit court of appeals is not yet reported. (See however pages following R. 114a.)

## Jurisdiction.

The judgment of the circuit court of appeals was entered on February 15, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925. See also Rules XI and XIII of the Criminal Appeals Rules promulgated by this Court on May 7, 1934.

## Questions Presented.

1. Whether a jury can find a seller of a commodity under price control guilty of a criminal violation where he invoices goods at and over ceiling price by improperly describing the commodities grade, if the purchaser has a right to inspect shipments and pay for the same if accepted at the ceiling price as determined by the purchaser.

2. Whether a custom of sellers to invoice goods in accordance with orders though the goods shipped are not in accordance with the invoice but where the purchaser has the right to inspect the goods and is only required to pay for the same at ceiling price in accordance with their determination of the quality and quantity is sufficient to support a conviction of selling goods at above ceiling prices.

## Statute and Regulations Involved.

The statute and regulations involved are the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. App. Sec. 901 *et seq.*), as amended, and Maximum Price Regulations No. 30 (7 F. R. 9732) issued under Section 2 (a) of that Act.

## Statement.

An information was filed in the District Court for the District of New Jersey against the defendant, Louis Bruno, charging him in five counts with violations of the regulations promulgated by the Price Administrator under the Emergency Price Control Act of 1942 in that allegedly he made five separate sales and deliveries of waste paper at prices above the maximum price he was permitted to charge for the type of paper sold (R. 2a-6a).

After a jury trial respondent was convicted and sentenced to imprisonment for a term of six months and to pay a fine of $500.00 (R. 1a). On appeal to the Circuit Court of Appeals for the Third Circuit, the judgment of conviction was set aside.

The evidence offered at the trial showed that Louis Bruno received orders from a broker named Carrano to ship waste paper to two different mills. The orders received from Carrano contained the following provision: "The above merchandise is purchased subject to mill or consignee's report as to weight, quality, excess freight, etc." (R. 16a). The orders received by Carrano from the mills and which were the cause for the orders he gave to Bruno contained the fol-

lowing condition: "All materials will be subject to our inspection and approval, and if rejected, same will be held subject to your order and risk and at your expense" (R. 17a).

Bruno would after receiving the orders give instructions to the girl in the office of T. Bruno Paper Stock Company to have the orders filled from the warehouse (R. 68a). It was the practice of this company in event they did not have enough of the grade of paper called for in the order to fill the car with anything they had in the warehouse and ship it out depending upon the mill inspection for a determination as to the quality and quantity (R. 67a).

No matter how the goods might be invoiced in the final analysis the company for which Bruno worked would only be paid the ceiling price of the goods received by the mill (R. 20a).

In all of the transactions involved in the various counts of the information in the end the defendant did not receive one cent over the ceiling price.

## ARGUMENT.

1. The government first contends that the decision if allowed to stand will impede the enforcement program. Nothing could be further from the truth. There was no evidence offered at the trial of the case to support the verdict. The law of this land has always been that a man is innocent until proven guilty beyond a reasonable doubt. The government at best had nothing but suspicion and conjecture upon which to predicate its action and this does not justify taking

the position that courts should not reverse cases if the original decision is in the governments favor.

a. It is secondly contended that the opinion in some remote aspect is in conflict with *United States ex rel. Bowels* v. *Leonard Seidmon,* decided by the Circuit Court of Appeals for the Seventh Circuit on March 19, 1946.

There is no conflict between the decisions in these two cases. One case involves the violation of the terms of a specific injunction whereas the other is a case charging a defendant with the wilful and unlawful sale of goods at above ceiling prices. The facts and questions involved are in no way related or similar.

b. The next point raised is that the defendant is guilty of the charge contained in the information because he violated some other regulation. This contention cannot stand.

In a criminal case one can only be convicted if he is shown to have violated the statute or regulation charged in the information. Proof of some other violation, and it is not conceded that there is any such proof in the instant case, is not proof of the crime charged.

2. It is true as contended by the government in its second point that it is the function of a jury and not of the appellate court to find facts. However when, as is the situation in the instant case there was no evidence to submit to the jury and the trial court erred in denying defendant's motions for a directed verdict the Circuit Court acted properly in reversing the conviction.

3. There is nothing in the record to support the government's third point as the record (R. 20a) clearly shows by

the testimony of the government's own witness that Bruno did not receive more than the ceiling price for any of the shipments complained of.

## Conclusion.

**The decision below is correct. There is no conflict of decisions nor any other reason for further review. It is respectfully submitted, therefore, that the petition for a writ of certiorari should be denied.**

GEORGE R. SOMMER,
Attorney for Louis Bruno.

May, 1946.